

1 LATHAM & WATKINS LLP  
2 Daniel M. Wall (Bar No. 102580)  
3 dan.wall@lw.com  
4 Ashley M. Bauer (Bar No. 231626)  
5 ashley.bauer@lw.com  
6 Colleen E. Heyler (Bar No. 313036)  
7 colleen.heyler@lw.com  
8 505 Montgomery Street, Suite 2000  
9 San Francisco, California 94111-6538  
10 Telephone: +1.415.391.0600  
11 Facsimile: +1.415.395.8095

12 *Attorneys for Defendant Abraham S. Farag*

13  
14 UNITED STATES DISTRICT COURT  
15  
16 NORTHERN DISTRICT OF CALIFORNIA  
17  
18 SAN FRANCISCO DIVISION  
19

20 UNITED STATES OF AMERICA,

21 Plaintiff,

22 v.

23 JOSEPH J. GIRAUDO, RAYMOND A.  
24 GRINSELL, KEVIN B. CULLINANE,  
25 JAMES F. APPENRODT, and  
26 ABRAHAM S. FARAG,

27 Defendants.  
28

CASE NO. CR 14-00534 CRB

**DEFENDANT ABRAHAM FARAG'S  
RULE 35(a) MOTION TO CORRECT  
SENTENCE**

1 Defendant Abraham Farag respectfully requests that the Court correct its sentence,  
 2 which, as it currently stands, appears to reflect an unintended disparity between Abraham and  
 3 similarly situated defendants resulting from the sequence by which the Court sentenced these  
 4 defendants.

5 Abraham was sentenced on May 25, first among the defendants who were not part of the  
 6 “Big Five.” This was intentional, but not because of anything having to do with Abraham or his  
 7 personal circumstances. Rather, as the Court explained, Abraham was the first non-Big Five  
 8 defendant sentenced because the Court wished to discuss *with Abraham’s counsel* the general  
 9 question of whether custodial sentences were appropriate in these cases. Hr’g Tr. at 39:13-20  
 10 (“May 25 Hr’g Tr.”), *United States v. Abraham Farag*, Case No. CR 14-0534-5 CRB, ECF No.  
 11 412 (May 25, 2018) (“Mr. Wall, I called on you first ... because I wanted to hear the best  
 12 arguments” against custodial sentences). And in fact, the Court and Abraham’s counsel  
 13 discussed those general issues for the better part of an hour. The Court then announced that  
 14 notwithstanding counsel’s arguments, it believed that principles of general deterrence and fealty  
 15 to the Sentencing Guidelines required custodial sentences in these cases (save for health issues).<sup>1</sup>  
 16 This was even with respect to Abraham, whom the Court described as “a person who is least  
 17 culpable in this whole panoply of people [involved in the San Mateo bid rigging conspiracy] . . .  
 18 certainly one of the least culpable people.” May 25 Hr’g Tr. at 32:9-16. Abraham was  
 19 sentenced, *inter alia*, to 30 days custody.

20 At the time, it appeared that the Court intended this to be the low end of the sentencing  
 21 spectrum. But then, on June 8, 2018, when this Court sentenced five other members of the  
 22 conspiracy, four individuals (Kuo Chang, Lydia Fong, Norman Montalvo, and Keith Goodman)  
 23 who carried *higher* offense levels than Abraham (13 rather than 11) received custodial sentences  
 24 50% to 100% *lower* than Abraham’s, including no custodial sentence at all in the case of Level

---

25 <sup>1</sup> May 25 Hr’g Tr. at 6:20-25 (“[I]t goes to, I think, the essence of what I think the sentencing  
 26 guideline commentary is directed in these types of cases, and it’s as follows: What serves as a  
 27 deterrent, a general deterrent to the commission of a crime if it’s not the prospect of jail?”); *id.*  
 28 at 42:21-25 (“[T]here must be a general deterrent that you have to understand that this is  
 behavior, notwithstanding everything you’ve done in your life that’s good, that will have a  
 serious impact on your life.”).

13 offender Keith Goodman.<sup>2</sup> Furthermore, as the following chart illustrates, Abraham ended up with one of the highest custodial sentences for defendants at offense levels of 11 or 13:

Defendant	Sentence (Custody)	Level	Volume of Commerce (per USA)	Apparent PSR Recommendation (per Defendants' Memoranda)
Keith Goodman	0 days	13	\$1,337,800	Probation = 3 yrs 6 mos. home confinement
Norman Montalvo	10 days	13	\$4,303,507	Probation = 3 yrs 6 mos. home confinement
Kuo Chang	15 days residential reentry center	13	\$1,498,711	Probation = 3 yrs 3 mos. home confinement
Lydia Fong	15 days	13	\$1,785,211	Probation = 3 yrs 3 mos. home confinement
James Appenrodt	15 days	11	\$2,134,447	Probation = 3 yrs
James Doherty	20 days	11	\$799,869	Unclear
Abraham Farag	30 days	11	\$456,250-\$928,087	Probation = 3 yrs 6 mos. home confinement

We bring this to the Court's attention out of concern that it is an unintended consequence of the Court's decision to sentence Abraham early in order to discuss general issues with Abraham's counsel. We understand and accept that the Court cannot reconsider Abraham's sentence at this time except in the case of "arithmetical, technical, or other clear error." Fed. R. Crim. P. 35(a). Accordingly, if the Court intended to impose a higher custodial sentence on

<sup>2</sup> See Judgment in a Criminal Case, *United States v. Kuo Chang*, Case No. 3:13-00670-CRB, ECF No. 49 (June 15, 2018); Judgment in a Criminal Case, *United States v. Lydia Fong*, Case No. 3:12-cr-00301-CRB, ECF No. 61 (June 15, 2018); Judgment in a Criminal Case, *United States v. Norman Montalvo*, Judgment in a Criminal Case, Case No. 3:12-cr-00785-CRB, ECF No. 61 (June 11, 2018); Judgment in a Criminal Case, *United States v. Keith Goodman*, Case No. 3:11-cr-00798-CRB, ECF No. 77 (June 15, 2018).

1 Abraham than others, we accept that decision as final. However, we believe that something else  
 2 explains this: namely, that at the time of Abraham's sentencing, the Court expected a 30 day  
 3 custodial sentence to be the low end of the range of custodial sentences for Level 11 and 13  
 4 offenders, and as such appropriate for "one of the least culpable people." May 25 Hr'g Tr. at  
 5 32:9-16. This turned out to be incorrect, as the actual distribution of custodial sentences imposed  
 6 on similarly situated defendants (first apparent on June 8, 2018<sup>3</sup>) was 0-45 days.

7 Again, we accept that we cannot, and therefore do not, ask the Court to reconsider  
 8 Abraham's sentence writ large. Nevertheless, sincere in our belief that (a) the Court did not  
 9 mean for Abraham to receive the second *highest* sentence of all Level 11 or 13 defendants  
 10 sentenced thus far, and (b) that this has happened *solely* because the Court misestimated the  
 11 distribution of relevant custodial sentences at the time of Abraham's sentencing, we respectfully  
 12 ask the Court to correct this error and reduce Abraham's custodial sentence to whatever period of  
 13 time reflects the Court's actual intentions.

14 DATED: June 22, 2018

Respectfully submitted,

15 By /s/ Daniel M. Wall

16 Daniel M. Wall (Bar No. 102580)  
 17 Ashley M. Bauer (Bar No. 231626)  
 18 Colleen E. Heyler (Bar No. 313036)  
 19 LATHAM & WATKINS LLP  
 20 505 Montgomery Street, Suite 2000  
 21 San Francisco, CA 94111-6538  
 Telephone: (415) 391-0600  
 Fax: (415) 395-8095  
 dan.wall@lw.com  
 ashley.bauer@lw.com  
 colleen.heyler@lw.com

22 *Attorneys for Defendant Abraham S. Farag*

23  
 24  
 25  
 26  
 27  
 28 <sup>3</sup> Abraham therefore could not move to correct his sentence within the normal 14-day period  
 from judgment, which had already expired.